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August 27, 2018

**VIA EMAIL**

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460  
(202) 566-1667

**RE: Freedom of Information Act Request Related to Proposed Rescission of 2015  
Waters of the US Rule and Trump Properties  
Expedited Processing Requested**

Dear FOIA Officer:

Free Speech For People (“FSFP”)<sup>1</sup> submits this request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for records concerning the relation between Trump properties and the Environmental Protection Agency’s (“EPA”) proposed rescission and recodification<sup>2</sup> of the 2015 Clean Water Rule: Definition of ‘Waters of the United States’ (“2015 Rule”).<sup>3</sup> Specifically, the records requested include communications between former Administrator Scott Pruitt (and/or key EPA officials involved in executing Executive Order 13778 to rescind the 2015 Rule) and employees, agents, or representatives of Donald Trump or the Trump Organization, including, but not limited to, consultant Edward Russo, regarding the impacts of the proposed rulemaking on Donald Trump’s golf courses.

On July 27, 2017, in response to Executive Order 13778,<sup>4</sup> the EPA issued a proposed rule to rescind the 2015 Rule and replace it with a rule (“Proposed Rule”) consistent with regulations prior to the 2015 Rule.<sup>5</sup> The golf course industry opposed the 2015 Rule; it argued the 2015 Rule “would likely have a devastating economic impact on the golf course industry” because golf courses would be newly required to comply with certain Clean Water Act rules and restrictions, including the need to obtain federal permits for land management or use.<sup>6</sup> President

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<sup>1</sup> Free Speech for People is a nonprofit, nonpartisan organization that works to defend the United States Constitution and reclaim our democracy for the people by engaging in campaign finance reform, legal advocacy, legislative work, and public education.

<sup>2</sup> 82 Fed. Reg. 34899–909 (July 27, 2017).

<sup>3</sup> 80 Fed. Reg. 37053–127 (June 29, 2015).

<sup>4</sup> Exec. Order No. 13778, 82 Fed. Reg. 12497–98 (Mar. 3, 2017).

<sup>5</sup> See 82 Fed. Reg. 34899–909 (July 27, 2017).

<sup>6</sup> Comments of the Golf Course Superintendents Association of America, Club Managers Association

Trump maintains an ownership interest in and receives income from numerous golf courses and their associated properties.<sup>7</sup> According to a news report, President Trump's golf courses could benefit from a rollback of the 2015 Rule.<sup>8</sup> Accordingly, by reversing the 2015 Rule's claimed impact on golf courses, rescinding the 2015 Rule could confer financial benefits on President Trump's golf courses and thus the President himself.

Free Speech for People submits this request in order to better understand (1) the impact of the Proposed Rule on President Trump's properties and (2) to what extent EPA officials communicated with President Trump or the Trump Organization concerning the proposed rescission of the 2015 Rule.

## **I. Records Requested**

Free Speech For People requests the following records from November 6, 2016 to the date of the search:

1. Any communications to members of the EPA transition team, Scott Pruitt, or other key EPA officials including but not limited to Myron Bell, Andrew Wheeler, Sarah Greenwalt, Samantha Dravis, Ryan Jackson, Byron Brown, Justin Schwab, Kevin Minoli, Michael Shapiro, Benita Best-Wong, Steven Neugeboren and Carrie Wehling from the President or any employees, agents, or representatives of Donald Trump or the Trump Organization, including consultant Edward Russo, regarding the potential impacts of the 2015 Rule on any or all Trump-branded properties. These communications should include:
  - a. Any communications from the President or any employees, agents or representatives of Donald Trump or the Trump Organization, including consultant Edward Russo, regarding the potential impacts of rescinding the 2015 Rule on any Trump-owned or managed properties, including Trump-branded golf courses and associated properties;
  - b. Any requests from the President or any employees, agents, or representatives of Donald Trump or the Trump Organization, including consultant Edward Russo, regarding meetings to discuss the rulemaking process to rescind the 2015 Rule.

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of America, National Club Association, American Society of Golf Course Architects, Golf Course Builders Association of America, National Golf Course Owners Association and Professional Golfers Association on the U.S. Environmental Protection Agency's and U.S. Army Corps of Engineers' Proposed Rule to Define "Waters of the United States" Under the Clean Water Act, 2-3 (November 14, 2014).

<sup>7</sup> United States Office of Government Ethics, Executive Branch Personnel Financial Disclosure Form, OGE Form 278e, Submitted by Donald J. Trump (May 16, 2017). These properties include, but are not limited to, Trump National Golf Course Jupiter, Trump National Golf Course Bedminster, Trump National Golf Course Charlotte, Trump National Golf Course Hudson Valley, Trump National Golf Course Philadelphia, Trump National Golf Course Doral, Trump Ferry Point LLC, Trump International Golf Club Florida, Trump National Golf Course Colts Neck, Trump National Golf Course Westchester, Trump National Golf Course Washington D.C., and Trump National Golf Course L.A. *Id.* Part 2, Filer's Employment Assets & Income, 16-18, 19, 21, 23.

<sup>8</sup> See Ben Brody, *Trump's Golf Courses Would Benefit from His Water Rule Rollback*, Bloomberg, March 1, 2017, <https://bloom.bg/2m7o7Q0>.

2. Any communications, research, or analysis regarding whether any Trump properties would be impacted by the 2015 Rule or by the EPA proposal to rescind the 2015 Rule. These records should include any agency communications or records indicating that any EPA staff raised concerns regarding the potential impacts of the proposed rulemaking on the President's properties.
3. Any requests from the President or any employees, agents, or representatives of Donald Trump or the Trump Organization, including Edward Russo, regarding requests for exemptions from permitting requirements under the Clean Water Act.
4. Any communications, research, or analysis regarding EPA-HQ-OW-2017-0203: Comments of Free Speech For People and Raritan Headwaters Association on Proposed Rescission of Definition of Waters of the United States.

Where a document contains information that falls into one or more of the categories described above, we seek the entirety of that document. If processing the entirety of a given document would be unusually burdensome, we ask that you give us an opportunity to narrow our request. Please disclose all segregable portions of otherwise exempt records.<sup>9</sup>

We ask that, in addition to reviewing all the materials that EPA would normally search in response to a FOIA request that EPA conduct a thorough search of government, private, and personal devices to ensure that any text messages or any other types of communication that may be retrieved from a computer, laptop, phone, or other electronic device used by EPA or its staff in conducting government or government-related communications is reviewed and included in the response to our request.

## **II. Application for Waiver or Limitation of Fees**

FSFP requests a waiver of document search, review, and duplication fees on the ground that disclosure of the requested records is in the public interest and that disclosure is "likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."<sup>10</sup>

For the reasons explained above, disclosure of the records would be in the public interest. In particular, disclosure of the requested information would be meaningfully informative about the operations or activities of the government. While general information concerning the Proposed Rule and President Trump's interest in his golf courses is already in the public domain, the information requested is not. The disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject because FSFP intends to publicize the information as broadly as possible in accordance with our core mission.

Moreover, disclosure would not further FSFP's commercial interest: as a 501(c)(3) FSFP does not have a commercial purpose. We will make any disclosed information available to the public

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<sup>9</sup> See 5 U.S.C. § 552(b).


<sup>10</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

at no cost. Thus, a fee waiver would fulfill Congress's legislative intent in amending FOIA to ensure "that it be liberally construed in favor of waivers for noncommercial requesters."<sup>11</sup>

If the fee waiver or reduction is denied, I hereby authorize expenditure of up to \$100 in search, processing, and other production costs, with a request that production be made electronically. If costs exceed \$100, please contact me for further authorization.

Please do not hesitate to contact me with any questions regarding this request. Thank you for your consideration and prompt response.

Sincerely,

A handwritten signature in black ink that reads "Shanna Cleveland". The script is cursive and fluid.

Shanna Cleveland

Senior Counsel

617-564-0672

[scleveland@freespeechforpeople.org](mailto:scleveland@freespeechforpeople.org)

and

Robert Joynt

Legal Intern

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<sup>11</sup> *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003).